

REPORT

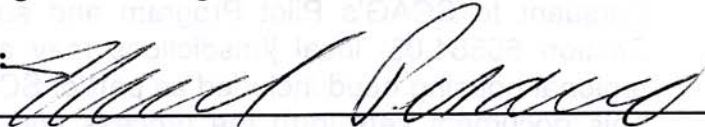
DATE: December 14, 2006

TO: Community, Economic & Human Development Committee

FROM: Joann Africa, Deputy Legal Counsel, 213-236-1928
africa@scag.ca.gov

SUBJECT: Draft Appeals Procedure re. Regional Housing Needs Assessment (RHNA)

EXECUTIVE DIRECTOR'S APPROVAL:



RECOMMENDED ACTION:

Approve Draft RHNA appeals procedure for transmittal to the Regional Council in January 2007 for review and approval.

SUMMARY:

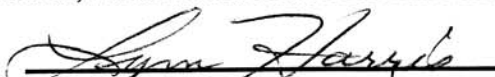
Attached for the CEHD Committee's review is a draft procedure for handling appeals related to the Regional Housing Needs Assessment (RHNA). Staff is seeking input from the CEHD Committee at this time in order to comply with the current RHNA schedule. Because this schedule currently projects the Draft Housing Allocation Plan to go before the Regional Council for approval on February 1, 2007, and the attached appeals procedure proposes the appeals filing period to commence thereafter with appeal hearings occurring in mid-April 2007, it is advisable to have the appeals procedure approved and in place before the adoption the Draft Housing Allocation Plan. As such, it is staff's intent to present the appeals procedure to the CEHD Committee at this time, and pending the CEHD's input, to transmit and present the appeals procedure to the Regional Council next month.

Legal staff intends to go over the various aspects of the attached draft appeals procedure with the Committee. These procedures were written based upon our Pilot Program and existing law. To the extent that an issue is not addressed in the Pilot Program or existing law, staff has proposed rules or methods which it believes are reasonable and consistent with our current RHNA process. The draft procedures also include guidelines relating to the trade and transfer process.

FISCAL IMPACT:

Funding for work leading to the appeals hearings is included as part of staff's additional appropriation request to fund RHNA, which is scheduled for discussion as part of today's Regional Council meeting.

Reviewed by:


Division Manager

Reviewed by:


Department Director

Reviewed by:


Chief Financial Officer



REGIONAL HOUSING NEED ASSESSMENT APPEALS PROCEDURE

Pursuant to SCAG's Pilot Program and supplemented by Government Code Section 65584.05, local jurisdictions may appeal their allocated share of the regional housing need included as part of SCAG's Draft Housing Allocation Plan. This document sets forth the process and procedure for local jurisdictions to appeal their regional housing need allocations. In accordance with SCAG's Pilot Program, local jurisdictions are entitled to no more than one appeal, and no appeal shall be allowed relating to post-appeal reallocation adjustments made by SCAG, as further described in Section II, below.

I. APPEALS PROCESS

A. DEADLINE TO FILE

Under existing law,¹ SCAG can determine the period to file appeals. In order to comply with SCAG's current RHNA schedule, any jurisdiction seeking to appeal its draft allocation of the regional housing need must file an appeal within thirty (30) calendar days of the adoption of the Draft Housing Allocation Plan. The Draft Housing Allocation Plan is currently projected to go before SCAG's Regional Council for review and approval on February 1, 2007. Late appeals shall not be accepted by SCAG.

B. FORM OF APPEAL

The local jurisdiction shall state the basis and specific reasons for its appeal on the appeal form prepared by SCAG. Additional documents may be submitted by the local jurisdiction as attachments, and all such attachments should be labeled and properly numbered.

C. BASES FOR APPEAL

Local jurisdictions shall only file an appeal based upon the criteria listed below. In order to provide guidance to potential appellants, additional information is

¹ Unless otherwise stated, any reference to "existing law" herein shall mean a reference to California Government Code Section 65584.05.

provided herein regarding SCAG's application of local factors in the development of SCAG's allocation methodology.²

1. Methodology – That SCAG failed to determine the jurisdiction's share of the regional housing need in accordance with the information described in, and the allocation methodology established and approved by SCAG.
2. AB 2158 Factors – That SCAG failed to consider information submitted by the local jurisdiction relating to certain local factors outlined in Govt. Code § 65584.04(b), including the following:

- a. Each member jurisdiction's existing and projected jobs and housing relationship.

Note: SCAG's Integrated Growth Forecast process included a review of jobs and housing relationships of local jurisdictions in the SCAG region. The resulting jobs and housing relationships were maintained for all local jurisdictions in the Integrated Growth Forecast throughout the forecasting/planning horizon.

- b. The opportunities and constraints to development of additional housing in each member jurisdiction, including the following:

- (1) lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period;

- (2) the availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities;

² The source of this information include documents previously released by SCAG, including but not limited to, its "Notice of Public Workshops regarding SCAG's Integrated Growth Forecast/Regional Housing Needs Assessment" (released in October 2006) and its "Public Hearing Notice" related to the second RHNA public hearing (released in December 2006).

- (3) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.
- (4) County policies to preserve prime agricultural land, as defined pursuant to Government Code Section 56064, within an unincorporated area.

Note: The Integrated Growth Forecasting process started with an initial survey of all local jurisdictions regarding their land use opportunities and constraints. To the extent that information was provided to SCAG related to their respective growth perspective, this information was incorporated as part of the Integrated Growth Forecast. In addition, Compass 2% growth opportunity areas were identified throughout the region to redirect growth favoring an urban form consistent with regional mobility and air quality goals. Moreover, in October and November 2006, SCAG held fifteen (15) public workshops for the subregions and cities in the SCAG region. As part of these workshops, local input regarding opportunities and constraints was gathered, reviewed and appropriately incorporated into the allocation methodology.

- c. The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

Note: The distribution of household growth assumed for purposes of development of the next Regional Transportation Plan (RTP) is reflected as part of the results of the "Integrated Growth Forecast," which ties land use to transportation planning.

- d. The market demand for housing.

Note: All indicators of market demand, such as trends of building permits, household growth, employment growth and population growth are built into the forecasting methodology of SCAG's Integrated Growth Forecast. In addition, SCAG's Community, Economic and Human Development (CEHD) policy committee reviewed and approved the recommendation by the RHNA Subcommittee that the Integrated Growth Forecast adequately addressed this area and therefore, elected to make no further adjustments relating the market demand factor in developing the allocation methodology.

- e. Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

Note: This factor was addressed as part of the initial survey of all local jurisdictions for the Integrated Growth Forecast, and review of subregional/local jurisdiction inputs/comments resulting from the Integrated Growth Forecast/RHNA workshops.

- f. The loss of units contained in assisted housing developments that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

Note: Based upon the recommendation of the RHNA Subcommittee, the CEHD approved a policy that combines an existing housing need statement with giving local jurisdictions the discretion to deal with this factor. This means that this factor will not be addressed as part of SCAG's allocation methodology. Instead, SCAG will provide the data for this factor for local jurisdictions to adequately plan for the loss of at risk low income units in preparing their housing elements.

- g. High housing costs burdens.

Note: Based upon the recommendation of the RHNA Subcommittee, the CEHD made a policy decision to assign more housing to high-housing cost jurisdictions relative to lower-cost jurisdictions based upon vacancy rate differentials as recommended by the RHNA Subcommittee. For purposes of addressing this factor in the allocation methodology, SCAG will use the regional vacancy rate of 3.5% (HCD Low scenario), broken down by renter and owner-status, across all jurisdictions to adjust the future vacant unit need, with special adjustments for impacted communities with a high concentration of low-income households. For these impacted communities, the lower of either the Census vacancy rate or the 3.5% vacancy rate will be used. Collectively, this approach in addressing the high housing cost burdens will increase housing stock in low vacancy, high-housing cost communities versus other jurisdictions, and is based upon an ideal healthy market vacancy adjustment consistent with the State HCD Low Scenario, which assumes an ownership vacancy rate of 2.3% and a renter vacancy rate of 5%.

- h. The housing needs of farmworkers.

Note: Based upon the recommendation of the RHNA Subcommittee, the CEHD made a policy decision that combines an existing housing need statement with giving local jurisdictions the discretion to deal with housing needs of farmworkers. This factor will not be addressed in SCAG's allocation methodology. Instead, SCAG will provide data relating to farmworkers housing needs to local jurisdictions to be used in preparing their housing elements. The data to be provided will include (1) farmworkers

by occupation, (2) farmworkers by industry, and (3) place of work for agriculture.

- i. Any other factors formally adopted by SCAG.

Note: To date, SCAG has not adopted any other planning factors to be considered as part of the development of the RHNA allocation methodology.

3. Changed Circumstances – That a significant and unforeseen change in circumstances has occurred in the jurisdiction that merits a revision of the information previously submitted by the local jurisdiction.

D. LIMITS ON SCOPE OF APPEAL

Existing law limits SCAG's scope of review of appeals. Specifically, in accordance with existing law, SCAG shall not grant any appeal based upon the following:

1. Any other criteria other than the criteria in Section I.C above.
2. A local jurisdiction's existing zoning ordinance and land use restrictions (for example, the contents of a local jurisdiction's current general plan). In accordance with Government Code Section 65504.04(d)(2)(B), SCAG may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions.
3. Any local ordinance, policy, voter-approved measure or standard limiting residential development. Pursuant to Government Code Section 65584.04(f), any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

E. ALTERNATIVE DATA REQUIREMENTS

To the extent a local jurisdiction submits alternative data or evidentiary documentation to SCAG in support of its appeal, such alternative data shall meet the following requirements:

1. The alternative data shall be readily available for SCAG's review and verification. Alternative data should not be constrained for use by proprietary conditions or other conditions rendering them difficult to obtain or process.
2. The alternative date shall be accurate, current, and reasonably free from defect.
3. The alternative data shall be relevant and germane to the local jurisdiction's basis of appeal.
4. The alternative data shall be used to support a logical analysis relating to the local jurisdiction's request for a change in its regional housing need allocation.

F. HEARING BODY

SCAG's Regional Council has the discretion to determine who shall hear and decide appeals relating to the RHNA process. By resolution, the Regional Council may delegate this responsibility to a hearing body. It is recommended that the RHNA Subcommittee, established by SCAG's CEHD Committee in September 2006 to assist staff in addressing certain factors for the allocation methodology, serve as the hearing body to handle and decide appeals. The RHNA Subcommittee shall be renamed as the "RHNA Appeals Board." The RHNA Appeals Board shall be comprised of six (6) members and six (6) alternates, each representing one of the six (6) counties in the SCAG region. There shall be a quorum of the RHNA Appeals Board provided that each county is represented, and while alternates are permitted to participate in the appeal hearing process, each county shall only be entitled to one vote.

To the extent that any member of the RHNA Subcommittee does not desire or is unable to serve as a member of the RHNA Appeals Board, the CEHD Committee may appoint another member of its Committee to serve on the RHNA Appeals Board, subject to the approval of the Regional Council. Appeals shall be granted or partially granted (see, Section I.H. herein) by a majority vote only.

G. APPEAL HEARING

Hearings related to appeals shall occur within 45 days of the deadline to file appeals. Notice shall be provided to the appealing jurisdiction in accordance with existing law. The appeal hearing may take place provided that each county is represented either by a member or alternate of the RHNA Appeals Board. Alternates are permitted to participate in the appeal hearing, provided however, that each county shall only be entitled to one vote when deciding on the appeal. In the event the hearing involves the member's or alternate's respective jurisdiction, the member or alternate shall be disqualified and is not permitted to participate in the hearing, except as a member of the public.

The hearing shall be conducted to provide the appealing jurisdiction with the opportunity to make its case regarding a change in its regional housing need allocation, with the burden on the appealing jurisdiction to prove its case. The RHNA Appeals Board need not adhere to formal evidentiary rules and procedures in conducting the hearing. An appealing jurisdiction may choose to have technical staff present its case at the hearing. At a minimum, technical staff should be available at the hearing to answer any questions of the RHNA Appeals Board. SCAG staff shall also be permitted to present its position and may make a recommendation on the technical merits of the appeal to the RHNA Appeal Boards, subject to any rebuttal by the appealing jurisdiction.

H. DETERMINATION OF APPEAL

The RHNA Appeals Board shall issue a written decision to the appealing jurisdiction within ten (10) days of the public hearing, if any. The decision shall be to (1) grant the appeal and approve the total amount of housing units requested by the jurisdiction to be reduced as part of its appeal; (2) partially grant the appeal and approve part of the amount of housing units requested by the jurisdiction to be reduced as part of its appeal; or (3) deny the appeal and reject any change or reduction to the jurisdiction's regional housing need allocation. The decision of the RHNA Appeals shall be final, and local jurisdictions shall have no further right to appeal.

II. POST-APPEAL REALLOCATION OF REGIONAL HOUSING NEED

In accordance with existing law (*see*, Government Code Section 65584.05(g)), after the conclusion of the appeals process, SCAG shall total the successfully appealed housing need allocations and if the adjustments total seven percent (7%) or less of the regional housing need, SCAG shall distribute the adjustments proportionally to all local jurisdictions.

If the adjustments total more than seven percent (7%) of the regional housing need, SCAG shall distribute the remainder proportionally to all local jurisdictions.

III. TRADE AND TRANSFER PROCESS

During the appeals process and prior to SCAG's adoption of the Final Housing Allocation Plan, or Final RHNA, a local jurisdiction who has appealed its regional housing need allocation with SCAG may attempt a "trade and transfer" of its allocation with another jurisdiction(s) who has also appealed its allocation to SCAG, for the purpose of developing an alternative distribution of appealed housing need allocations consistent with existing law. SCAG shall facilitate or assist in trade and transfer efforts by local jurisdictions, to the extent reasonably feasible.

SCAG shall include the alternative distribution proposed by the local jurisdictions in the Final RHNA, provided that the proposed alternative distribution maintains or accounts for the total housing need originally assigned to these communities and complies with the following guidelines:

- A. Transfer request shall have at least two willing partners and total number of units originally assigned to the group requesting the transfer (hereinafter referred to as the "transfer group") cannot be reduced.
- B. All members of the transfer group shall retain some allocation of very-low and low-income units.
- C. The proposed transfer includes a description of incentives and/or resources that will enable the jurisdiction(s) receiving an increased allocation to provide more housing choices absent the proposed transfer and accompanying incentives or resources.
- D. The proposed transfer shall be consistent with existing housing law, including the RHNA objectives set forth in Government Code Section 65584(d) (1) through (4).
- E. If the proposed transfer results in a greater concentration of very-low income or low-income units in a receiving jurisdiction which has a disproportionately high share of households in that income category, the transfer group shall provide a reasonable justification to SCAG so as to address the RHNA objectives set forth in Government Code Section 65584(d) (1) through (4).
- F. The proposed transfer shall comply with the Pilot Program, and shall not prohibit SCAG from making a determination that its Final RHNA is consistent with SCAG's regional transportation plan (RTP) and air quality conformity finding of the RTP in accordance with the Pilot Program.

IV. FINAL RHNA

After SCAG redistributes the adjustments to the local jurisdictions following the appeals process, incorporates any alternative distributions of transferring jurisdictions, and receives the final allocations of subregional housing need from the delegated subregions, SCAG shall adopt a Final RHNA. Any challenges to the final RHNA is subject to judicial review pursuant to Section 1094.5 of the California Code of Civil Procedure.

V. DELEGATED SUBREGIONAL APPEALS PROCESS

All delegated subregions shall follow and comply with SCAG's appeals procedure set forth, except that the delegate subregion has the discretion to determine its

own filing period for appeals and the composition of its appeal hearing body. In addition, delegated subregions may facilitate a trade and transfer process consistent with the guidelines developed by SCAG and identified herein in Section III.

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